

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of

2006 Quadrennial Regulatory Review --	)	MB Docket No. 06-121
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
 2002 Biennial Regulatory Review --	)	MB Docket No. 02-277
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
 Cross-Ownership of Broadcast Stations	)	MM Docket No. 01-235
and Newspapers	)	
 Rules and Policies Concerning Multiple	)	MM Docket 01-317
Ownership of Radio Broadcast Stations	)	
in Local Markets		
 Definition of Radio Markets	)	MM Docket 00-244

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REPLY COMMENTS  
OF THE AMHERST ALLIANCE  
TO CAPITOL BROADCASTING COMPANY  
AND SENATOR BYRON DORGAN, DEMOCRAT OF NORTH DAKOTA

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group. Founded on September 17, 1998, in Amherst, Massachusetts, our organization has been a strong and consistent voice for media reform in many FCC proceedings, including the media ownership proceedings of recent years. On October 23, 2006, Amherst filed both

Written Comments and Supplemental Written Comments in the above-referenced Dockets.

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We are filing these Reply Comments in order to express our strong agreement with a key assertion in the October 23, 2006 Written Comments of CAPITOL BROADCASTING COMPANY, based in Raleigh, North Carolina.

Although we have not yet seen it posted in the Electronic Comment Filing System (ECFS) files for the media ownership Dockets, we know from trade press reports that the same assertion has also been made by U.S. Senator Byron Dorgan, D-ND, in a recent letter to FCC Chairman Kevin Martin.

The assertion is this:

Any proposed rule on media ownership ceilings is premature while action is still pending in the FCC's extensive, publicized Broadcast Localism Docket (RM-10803).

Amherst adds that other materially relevant matters are also awaiting a decision.

**Until Relevant Pending Decisions Have Been Made,**

**A New Proposed Rule On Media Ownership Ceilings Would Be Premature**

The possible actions which might arise from the Broadcast Localism proceedings could have a profound impact on the media status quo. It makes much more sense for the FCC to initiate the selected actions first,

assess their actual impact on the media marketplace and then decide whether the media ownership ceilings should be changed.

(In Amherst's view, of course, the only change which is worthy of consideration is the choice between retaining current media ownership ceilings or reducing them.)

All of the following Dockets have been the subject of public comments, but are still in limbo:

Broadcast Localism (previously referenced): RM-10803

Translator Reform: RM-10609

A proposed Low Power AM (LPAM) Radio Service: RM-11287

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Any or all of these Dockets could produce policies which materially affect the current level of competition in the media marketplace. Nor do these 3 Dockets exhaust the body of undecided decisions which could have a material effect, for better or worse, once the Commission has actually made the pending decisions.

We note that some unresolved matters date all the way back to 1998 and 1999, when the Commission received public comments -- in Dockets RM-9208, RM-9242 and 99-25 -- on whether to establish a Low Power FM (LPFM) Radio Service.

In this vein, Amherst stresses again the basic points raised in its recent Supplemental Written Comments. We now reiterate briefly the previously specified, materially relevant matters which: (a) have been open to public comment; but (b) have not yet been the subject of final action by the Commission.

### **Need to Proceed With Implementing The Long-Pending**

### **“Filing Window” for LP10 Radio Stations**

In the Supplemental Written Comments, we identified one policy decision by the Commission in January of 2006, in its Docket 99-25 final rule to establish the LPFM Radio Service, which has been awaiting implementation for almost 7 years.

This policy is the decision to issue licenses for LP10 stations, broadcasting at 1 to 10 watts, as well as the larger LP100 stations, broadcasting at 11 to 100 watts.

Because nearly 7 years have passed without the issuance of a “filing window” for LP10 station applications, only LP100 stations have actually been licensed as part of the LPFM Radio Service. By effectively excluding from consideration the lower wattage LP10 stations, which require a smaller portion of the radio spectrum, this delay has had the practical consequence of limiting opportunities for LPFM stations in large urban areas or other areas where the radio spectrum is highly congested.

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Because the concept of LP10 stations was open to public comments in 1998 and 1999, and LP10 filing windows were actually approved by the FCC in 2000, the FCC is procedurally empowered to schedule and announce LP10 filing windows at any time.

### **Need to Issue Proposed and/or Final Rules**

### **On Possible Policies Which Have Already Been the Subject of Public Comments**

It is time for the Commission to make up its institutional mind on whether to approve or reject certain proposals that would encourage and/or protect Low Power Radio stations. Most of these proposals were first presented to the FCC in 1999.

Even outright rejection might be better than perpetual limbo, since in that case it would be clear to the new Session of Congress that legislative solutions are needed.

Four perpetually pending proposals are listed below:

**1. Protect LPFM stations and Class D educational stations (as well as future LPAM stations) from displacement by new, upgraded or relocating full power commercial stations.** In certain large urban areas, and in other areas where the radio spectrum is congested, this policy is essential for the growth of Low Power Radio. Indeed, it is even essential for the simple preservation of those few Low Power Radio stations, and Class D educational stations, which already broadcast in such areas. THE AMHERST ALLIANCE first proposed this policy in 1999, in Written Comments filed in Docket 99-25, and again in an Emergency Petition For Expedited Relief, filed by Amherst and 52 other parties (which later grew to 62, due to retroactive signatories) in 2003. Since then, the same proposal has also been presented in the Broadcast Localism and Translator Reform Dockets.

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**2. Establish a Low Power AM (LPAM) Radio Service, with 10-watt stations.** Since there is generally less competition for frequencies on the AM

Band, LPAM will permit licensing of additional Low Power Radio stations in areas where LPFM stations are rare or non-existent. The FCC's authorization of implementation for the In Band On Channel (IBOC) version of Digital Radio, which Amherst and others have opposed, has eroded this benefit but not eliminated it. In 2005, the FCC opened Docket RM-11287, for the solicitation of public comments on a Petition For Rulemaking filed by 5 parties, led by THE AMHERST ALLIANCE.

Later, the 5 original Petitioners conferred with other LPAM advocates to supplement the original proposal with an administratively simpler approach that all LPAM advocates could endorse. This revised "consensus" proposal was later filed in Docket RM-11287 by 12 parties: that is, all of the nationally active organizations and individuals advocating new LPAM stations. To make the LPAM Radio Service easier to implement, and administer, the 12 parties proposed a single station size of 10 watts or less, rather than a tiered system, and further proposed using the current National Travelers Information Service (NTIS) stations as a general starting point for technical specifications. The uniform 10-watt power ceilings will also make it easier to find open frequencies for the new LPAM stations in areas with highly congested spectrum.

**3. Translator Reform: Allow LPFM stations to displace satellite-fed translators (aka "satellators") and long distance translators.** As with other items on this list, THE AMHERST ALLIANCE first proposed this policy in 1999, during the LPFM proceedings in Docket 99-25 -- and proposed it again, in 2003, in a multi-party Emergency Petition for Expedited Relief. The policy was then proposed by Amherst, for the third and fourth times, in the Dockets on Broadcast Localism and (of course) Translator Reform.

Translators have proliferated in recent years, sometimes forming national radio station “chains” and blocking opportunities for possible new stations that would be local in more than name. By allowing displacement of only those translators which are fed by satellite and/or located at least 50 miles from their listeners, Amherst’s proposal would re-localize translator operations. No translators which are already truly local would be displaced under this proposal.

**4. Allow LPFM stations of 250 watts, or even 1,000 watts, in truly rural areas.** While large urban areas are clearly the primary Frontier Area for Low Power Radio stations, there is also a scarcity of such stations at the other demographic extreme: truly rural areas, notably including some deserts, farmland and/or Indian Reservations. To have a realistic hope of supporting themselves financially, some Low Power Radio broadcasters need a larger geographical service area -- that is, more potential listeners -- than 100 watts can provide. In 1999, in Docket 99-25, THE AMHERST ALLIANCE first proposed a new category of LP250 stations, licensed to broadcast at 250 watts. The concept was also proposed in the Dockets on Broadcast Localism and Translator Reform.

Amherst has not proposed 1,000 watts for such stations, but other parties have done so. Amherst can accept 1,000 watts -- if the area in question is truly rural.

For this purpose, we define “truly rural” as having a service area which falls completely outside of any Standard Metropolitan Area or Standard Micropolitan Area, as identified by the Bureau of the Census at the U.S.

Department of Commerce. Roughly 12% of the U.S. population -- 1  
American in 8 -- lives in such a location.

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### Conclusion

For the reasons set forth herein, THE AMHERST ALLIANCE respectfully reiterates its call for rolling back the current media ownership ceilings and initiating reasonable divestitures, and further urges the Commission to take these additional steps:

- (A) Implement previously approved “filing windows” for 10-watt LPFM stations;
  - (B) Protect LPFM stations and Class D educational stations (and future LPAM stations) from displacement by full power commercial stations;
  - (C) Establish a Low Power AM Radio Service, with 10-watt LPAM stations;
  - (D) Allow LPFM stations to displace satellite-fed translators (aka “satellators”) and long distance translators;
- And
- (E) Allow 250-watt LPFM stations in truly rural areas (which fall completely outside of any Standard Metropolitan Area or Standard Micropolitan Area).

Respectfully submitted,



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Dated: \_\_\_\_\_  
December 15, 2006

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I, Donald Joseph Schellhardt, Esquire, certify that I am sending a copy of these Reply Comments to: (a) Teresa Artis, Esquire, Assistant General Counsel, CAPITOL BROADCASTING COMPANY, 2619 Western Boulevard, Raleigh, NC 27606 [tartis@cbc-raleigh.com](mailto:tartis@cbc-raleigh.com); and (b) U.S. Senator Byron Dorgan, D-ND, C/O Minot District Office, Suite 100, 100 1<sup>st</sup> Street, Minot, ND 58701.

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Donald Joseph Schellhardt, Esquire

Dated: \_\_\_\_\_  
December 15, 2006